

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ELDA MARTINEZ,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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Civil Action No. SA-12-CV-649-XR

ORDER

On this date, the Court considered the status of the above-captioned case. Over the course of the last twenty-one months, Plaintiff has filed four lawsuits regarding a parcel of real property with the following legal description:

Lots 3 and the West 9 Feet of Lot 4, Block 30, New City Block 9590, University Park, Unit 4, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 2222, Page 345, Deed and Plat Records of Bexar County, Texas.

All four lawsuits pertain to a promissory note executed by Plaintiff to finance the purchase of the foregoing property. Plaintiff became delinquent on her payments, and on April 6, 2010, Defendant Wells Fargo foreclosed upon Plaintiff and began proceedings to evict her from the property. Wells Fargo asserts that a State court issued a writ of possession, and that an eviction was scheduled for October 4, 2010. On October 4, 2010, in an effort to forestall eviction proceedings, Plaintiff filed suit in the 407th Judicial District Court of Bexar County, Texas, and obtained an ex parte temporary restraining order prohibiting the scheduled eviction. No

injunction issued and the TRO ultimately expired on its own accord.¹

Wells Fargo asserts that it again provided Plaintiff with notice that it would execute the writ of possession, and re-scheduled the eviction for June 24, 2011. On June 24, 2011, Plaintiff filed suit in the 407th Judicial District Court of Bexar County, Texas. The Court granted an ex parte Temporary Restraining Order prohibiting Defendants from evicting Plaintiff from the property, and setting a hearing on Plaintiff's Application for Injunction for July 7, 2011. Defendant removed the case to this Court on July 6, 2011, which is now designated as Case No. SA-11-cv-551-XR.

In April, 2012, Wells Fargo again provided Plaintiff with notice that it would execute the writ of possession, and scheduled the eviction for April 24, 2012. Rather than seeking a hearing on her application for injunctive relief in this Court (Case No. 11-cv-00551-XR), Plaintiff filed a new suit in the 225th Judicial District Court of Bexar County, TX. The Court granted an ex parte Temporary Restraining Order prohibiting Defendants from evicting Plaintiff from the property. On May 7, 2012, Defendant removed the third State court case to this Court, which was designated as Case No. 5:12-cv-00433-FB. On June 18, 2012, this Court consolidated Case No. 5:12-cv-00433-FB with Case No. SA-11-cv-551-XR, and designated the latter as the lead case. The TRO obtained in the State court case expired on its own accord.

On June 15, 2012, Plaintiff was once again provided notice that Wells Fargo intended to execute the aforementioned writ of possession, and scheduled the eviction for June 18, 2012. Per

¹On March 22, 2012, Defendant filed a Motion for Summary Judgment in the first state district court case. The motion was set for hearing on April 16, 2012. The morning of the hearing, Plaintiff non-suited her claims

her prior practice, rather than requesting a preliminary injunction in either Cause No. 5:12-cv-00433-FB or Case No. 11-cv-00551-XR, Plaintiff filed a fourth suit in the 407th Judicial District Court of Bexar County, TX and obtained a fourth ex parte temporary restraining order. The fourth State court case was also removed to federal court, and designated as the above-captioned case (5:12-cv-00649-FB).

Consequently, there are now three cases pending in the US District Court for the Western District of Texas – San Antonio Division regarding the same subject matter and the same set of alleged facts. Defendant has filed a Motion for Summary Judgment in Case No. 11-cv-00551-XR and a 12(b)(6), a Motion to Dismiss in 5:12-cv-00433-XR, and a Motion to Dismiss in the above-captioned case.


IT IS HEREBY ORDERED that the above entitled and numbered case is consolidated with case numbers 5:12-cv-00433-XR and 11-cv-00551-XR. Case Number 11-cv-00551-XR is designated as the lead case, and future filings should be made under that cause number. In addition, Plaintiff is ORDERED to file a consolidated complaint by **August 21, 2012**, specifying the causes of action which she believes entitle her to relief. Failure to file a complaint by that date may result in dismissal of the case. Defendant's Motion for Summary Judgment in Case No. 11-cv-00551-XR (docket no. 14) is DISMISSED AS MOOT. Defendant's Motion to Dismiss in Case No. 5:12-cv-00433-XR (docket no. 2) is DISMISSED AS MOOT. Defendant's Motion to Dismiss in the above-captioned case (docket no. 3) is DISMISSED AS MOOT.

As noted above, Plaintiff's counsel has filed the same lawsuit four times in State court in order to obtain a Temporary Restraining Order enjoining eviction. These duplicative lawsuits are

interfering with the orderly administration of justice.

It is so ORDERED.

SIGNED this 7th day of August, 2012.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE